

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )  
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Implementation of Section 8 )  
of the Cable Television )  
Consumer Protection and )  
Competition Act of 1992 )  
)

Consumer Protection and )  
Customer Service )  
)

MM Docket No. 92-263

TO: THE COMMISSION

**REPLY COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS**

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TO: THE COMMISSION

**REPLY COMMENTS OF COALITION OF SMALL SYSTEM OPERATORS**

The Coalition of Small Systems Operators 1/ hereby replies to comments filed in the referenced proceeding. The Small System Operators operate primarily systems serving very small, rural communities with fewer than 1,000 subscribers. The Small System Operators urge the Commission to exempt systems with fewer than 1,000 subscribers from the customer service rules in view of the high costs of operating systems in sparsely

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1/ The Coalition of Small System Operators includes: Midcontinent Media, Inc., Galaxy Cablevision, Vantage Cable, Classic Cable, USA/MW1 Cablesystems, Inc., Buford Television, Inc., Triax Communications Corp., Douglas Communications Corp. II and Star Cable Associates. The Coalition has expanded since it first filed comments in this proceeding, and it continues to expand.

populated rural areas, the limited potential for profit for these systems, and the importance of continued availability of reasonably priced cable service in these areas.

**I. SMALL SYSTEMS -- WITH FEWER THAN 1,000 SUBSCRIBERS -- SHOULD BE EXEMPT FROM FCC CUSTOMER SERVICE STANDARDS**

Small systems operate with much lower net revenues per subscriber than larger systems because their systems often serve sparsely populated areas, they must cover large geographic areas, and they have fewer overall subscribers to offset their costs of operation. An exemption from the FCC's customer service standards is required for these systems because of the important service that small systems provide to rural areas and the danger that costly customer service requirements could force these fragile systems to curtail service. Many of the commenters in the captioned proceeding support exemption of small systems from the FCC's rules. See, e.g., Comments of Community Antenna Television Association at 3-4, 8-9, Comments of Consortium of Small System Operators at passim, Comments of New York State Commission on Cable Television ("NYSCCT") at 11-12. We do not suggest that franchising authorities may not, in the process of negotiating franchises or renewals, require reasonable customer service standards geared to a system's particular characteristics even if the FCC's standards "exempt" small operators. But it is important that the FCC's standards not treat small systems like larger ones.

**A. Definition of "Small System" -- 1,000 Subscribers**

The Small System Operators outlined in comments their unique operating costs and problems stemming from low density service areas and high construction and operating costs, justifying exemption of systems with

fewer than 1,000 subscribers from the Commission's customer service rules. For purposes of this exemption, the definition of "small system" should be tailored in such a way that it is neither too broad (including in the exemption systems which do not face the unique problems that justify exemption from the rules), nor too narrow (excluding from the exemption systems that simply cannot comply with costly, rigorous standards). To this end, the Small System Operators support a definition of "small system" that would apply only to those very small systems serving fewer than 1,000 subscribers.

Although the Small System Operators do not oppose a broader definition as suggested by some commenters (encompassing systems with up to 10,000 subscribers), 2/ it is important that the unique characteristics of systems with fewer than 1,000 subscribers not be lost in arguments for a broader exemption. Whatever the justification for an exemption for larger systems, systems of less than 1,000 subscribers tend to have significantly higher costs per subscriber. For example, density (measured by number of homes passed per mile) for most systems with less than 1,000 subscribers would likely be significantly lower than density for systems with more than 10,000 subscribers. Similarly, smaller systems are less able to achieve economies of scale. Moreover, to the extent that special circumstances exist for a larger system, that system should be free to seek waiver of the rules. The waiver solution is far more practical for a system with 10,000 subscribers than it would be for a very small operator. For example, if 20 systems with 500 subscribers (a number much higher than the average

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2/ See, e.g., Comments of the Community Antenna Television Association at 9, Comments of Consortium of Small System Operators at 5.

number of subscribers served by the Small System Operators), sought waivers from each of their 20 franchise authorities, the administrative cost of pursuing 20 waiver requests would substantially exceed the cost of a single waiver request filed by a system with 10,000 subscribers.

Other commenters suggest that "small system" be defined not only based on system size, but also based on independent or affiliated status. However, whether an operator of a small system happens to be affiliated with other systems, small or large, it will experience the very same problems and difficulties as an unaffiliated small system.

The Consortium of Small System Operators, a group of independent small system operators, argues that only independently-owned systems serving fewer than 10,000 subscribers or with annual gross revenues of less than \$7.5 million should be exempted from the customer service rules. Comments of Consortium of Small System Operators at 4-5. Yet every reason that the Consortium cites for its independent small systems to be exempted from the rules also applies to affiliated small system operators: (i) sparse population in service area; (ii) higher operating costs (due to factors such as lack of volume discounts on equipment and programming, and the large geographic area covered by systems, requiring extra hardware and higher pole attachment costs); (iii) inability to maintain a fleet of vehicles sufficient to meet rigorous installation and service deadlines in their large territories; and (iv) insufficient staffing to meet telephone answering requirements and lack of resources to increase such staffing. Comments of Consortium of Small System Operators at 1, 3-4.

There is no reason to penalize small systems which happen to be affiliated with other systems by categorizing them as "MSO's" and denying their eligibility for exemption from customer service rules. Moreover, there

is little danger that this definition of "small system" for purposes of the exemption would significantly benefit large, powerful MSO's. Operation of small systems in rural areas by large MSO's is a small fraction of their operations -- in fact, larger operators have intentionally shied away from providing service to these less profitable, low density areas.

**B.    Unique Operating Characteristics of Small Systems  
      Justify Exemption from Customer Service Rules**

The Small System Operators appreciate the importance of customer service. When operating a system that passes 29 homes per mile, the cable penetration rate is crucial to the survival of a cable system. The provision of adequate customer service is a necessary part of doing business in order to attract and retain subscribers, especially in these very small systems which cannot afford to sacrifice a single customer.

Reasonable customer expectations, however, may differ substantially for large, metropolitan systems and small, rural ones. For example, urban subscribers may reasonably expect a service truck to respond within 24 hours to a service interruption in a city where the driver would only have to travel a few miles to reach the subscriber's home. However, where subscribers are spread out over thousands of square miles, as with many of the Small System Operators' Systems, it would be clearly unreasonable for subscribers to expect such service. And in the experience of the Small System Operators, subscribers in small, rural systems do not expect it. They are generally delighted to have a repair person respond on his next visit to the community.

The cost of providing a given service is a key consideration in determining whether it is reasonable. Some commenters take the unrealistic position that all subscribers should receive precisely the same

service, and that customer service rules should apply blindly across the board to all cable systems. 3/ Application to small systems of precisely the same standards that might be appropriate for large ones would mean reduced programming service -- or loss of service -- in rural areas where these standards would be oppressive.

**II. EXEMPTION OF SMALL SYSTEMS FROM THE FCC'S CUSTOMER SERVICE STANDARDS IS THE MOST PRACTICAL PROCEDURAL MEANS TO GRANT THEM REQUIRED FLEXIBILITY**

Several commenters suggest case-by-case waivers as an alternative to exemption of small systems from the FCC's customer service rules. Whether the waiver request would be sought from the FCC or from the franchise authority, adoption of the waiver proposal instead of the small system exemption would be at odds with the underlying reason for treating small systems differently -- to maintain their operating costs at a reasonable level so that rural subscribers continue to have reasonably priced cable service. If small systems, many of which have hundreds of franchise agreements, were forced to seek waiver from each of the franchise

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3/ Comments of National Association of Telecommunications Officers and Advisors ("NATOA") at 8, Comments of NYSCCT at 8, Comments of Municipal Franchising Authorities ("MFA") at 13-14.

authorities (a process which could, if appealed, end up at the FCC or even in federal court), the administrative costs would be staggering. 4/

Moreover, the waiver approach does not make sense because, regardless of what standards the FCC adopts, franchise authorities must take action in order to apply those standards (or other customer service standards) to cable operators in the first instance. 5/ Therefore, it should be the franchise authority adopting rules, and not the operator seeking a waiver, which initiates the process of determining what customer service rules should apply, if any.

### III. CONCLUSION

Systems with fewer than 1,000 subscribers, regardless of whether they are independent or affiliated, face unique operating costs and provide important service to rural areas. Because of the unique circumstances in which they operate, the Commission should exempt these very small

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4/ Some commenters suggest that the franchise authority, and not the system operator, should be responsible for seeking waiver of the rules from the FCC. Under this approach, the cable operator's costs would be no less substantial because the operator would have to first persuade the franchise authority to file the waiver request, and then participate in the FCC process. See, e.g., Comments of MFA at 8.


5/ Some commenters suggest that the FCC's customer service rules should be self-effectuating, not requiring action by a franchise authority to adopt them. See, e.g., Comments of NYSCCT at 6, Comments of NATOA at 2. Nevertheless, it is clear that Congress intended to delegate to franchise authorities the option to impose customer service regulations on cable systems, giving local authorities enforcement power and the discretion to establish alternative customer service standards. Therefore, it is incumbent upon franchise authorities to affirmatively adopt FCC customer service standards or any other set of standards -- within the franchising process -- it believes should be applied to a given system.



systems from its customer service rules, leaving the franchise authorities with the discretion to regulate such systems.

Respectfully submitted,

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<b>NAME OF OPERATOR</b>	<b>TOTAL # OF SUBSCRIBERS</b>	<b>TOTAL # OF COMMUNITY UNITS</b>	<b>TOTAL # OF STATES SERVED</b>	<b>TOTAL # OF HEADENDS</b>	<b># OF HEADENDS WITH LESS THAN 1,000 SUBSCRIBERS</b>
Douglas Communications Corp. II	103,090	494	13	437	428
Galaxy Cablevision	54,887	200	6	129	112
MW1/USA Cablesystems, Inc.	37,334	484	16	443	443
Vantage Cable Associates, L.P.	30,737	126	7	126	123
Triax Communications Corp.	326,052	1,075	16	444	361
Buford Television, Inc.	77,206	260	8	168	154
Classic Cable	29,904	78	5	73	65
Midcontinent Media, Inc.	72,502	174	4	170	162
Star Cable Associates	60,279	150	6	62	33

**FOR SYSTEMS WITH FEWER THAN 1,000 SUBSCRIBERS**

<b>NAME OF OPERATOR</b>	<b>AVERAGE # OF SUBSCRIBERS</b>	<b>AVERAGE # OF HOMES PASSED PER MILE</b>	<b>AVERAGE # OF MILES OF PLANT</b>	<b>AVERAGE # OF ACTIVATED CHANNELS</b>	<b>AVERAGE # OF SUBSCRIBERS PER MILE</b>	<b>AVERAGE PENETRATION</b>
Douglas Communications Corp. II	191	40	8	16	24	60%
Galaxy Cablevision	396	37	19	28	20	54%
MW1/USA Cable Systems, Inc.	84	29	7	21	12	41.3%
Vantage Cable Associates, L.P.	221	45	7.23	21	30	66%
Triax Communications Corp.	364	39	15	22	25	44%
Buford Television, Inc.	322	24	29	24	11	45.83%
Classic Cable	331	51	10	25	39	76.4%
Midcontinent Media, Inc.	240	57	5.85	16	41	72%
Star Cable Associates	429	28	32	26	13.4	47.8%

## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Reply Comments were mailed, by first class mail, postage prepaid, this 26th day of January, 1993 to:

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